

"Graphite-like" simply means having the general graphite crystal structure which comprises layers of carbon atoms in a network of hexagons with alternate layers shifted so that a carbon atom in an adjacent layer is positioned above or below the center of a hexagon. In the case of true graphite, the interlayer distance is about 3.40 Å (see page 6, lines 12-18). It is respectfully urged that "graphite-like" is not indefinite.

The Examiner has rejected claim 1 under 35 U.S.C. § 102(b) or, in the alternative, under 35 U.S.C. § 103(a) as obvious in view of Miyabayashi et al. U.S. Patent No. 4,725,422. The Examiner states:

The reference teaches in ex. 1-1 a graphitized material having the claimed d002 spacing. Although it is not characterized as 'graphite-like' and possibly differs in the way it was made, any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art the burden of proof is shifted to the applicant to establish that their product is patentably distinct not the examiner to show that the same process of making, see *In re Brown*, 173 U.S.P.Q. 685, and *In re Fessmann*, 180 U.S.P.Q. 324. The intended use does not limit the material.

Reconsideration is respectfully requested.

Miyabayashi et al. disclose that activation is optional. Moreover, Miyabayashi et al. do not disclose activation by an alkali. During the activation process, a large number of micropores adapted for adsorption are formed. (See specification, page 1, lines 37, et seq.) Such activation is essential to realize a large capacitance double layer capacitor.

The Examiner has rejected claims 4, 6, and 11 under 35 U.S.C. § 103(a) based upon the Miyabayashi et al. patent. Claims 4 and 11 are patentable for the same reasons set forth for claim 1. With regard to claim 11, while it may be obvious to limit expansion as an expedient for shipping, it does not necessarily follow that it is obvious to provide a "dimension-limiting structure acting to limit expansion of said plates on application of a

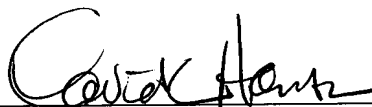
voltage." It does not follow that a structure suitable for shipping would necessarily be strong enough to withstand the expansion under application of voltage.

In view of the foregoing amendments and remarks, it is urged this case is now in condition for allowance.

Respectfully submitted,

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MARKED-UP VERSIONS OF CLAIMS 1, 4, AND 11

1. (Amended) A carbon material for an electric double layer capacitor, comprising:

crystallites of graphite-like carbon produced by activating a carbon material with an alkali, said crystallites having interlayer distances of 0.365 to 0.385 nm.

4. (Amended) An electric double layer capacitor having polarized plates immersed in an organic electrolyte, said electric double layer capacitor comprising:

said polarized plates being made of a carbon material comprising crystallites of graphite-like carbon produced by activating a carbon material with an alkali, said crystallites having interlayer distances of 0.365 to 0.385 nm.

11. (Amended) An electric double layer capacitor comprising:

an electrolyte consisting of a nonaqueous solvent;

polarized plates made of a carbon material activated with an alkali having interlayer distances  $d_{002}$  of 0.365 to 0.385 nm; and

a dimension-limiting structure in which said electrolyte and said plates are held, said dimension-limiting structure acting to limit expansion of said plates on application of a voltage.